or not at all. It seems to me that where a partnership asset is registered in the name of an agent or in the name of one partner, the other partners can call for a transfer to themselves at any time. They have a caveatable interest either as claimants of title or as claimants of registrable interests as un-divided co-proprietors. In my view, the second and third respondents had a valid caveatable interest on the date of entry of the caveat.

The next question to be decided is the position of the second and third respondents at the date of the agreement for sale and at the date of this suit. It is not necessary to consider this question except on the basis that the firm was solvent. That the firm was solvent can be deduced from the order of the Court sanctioning the sale of two businesses as going concerns and allowing the partners to bid for them. At the date of the agreement for sale and at the date of this suit, the partnership had ceased, and the second and third respondents were then in the position of co-purchasers, entitled to call for transfer of their undivided shares by the person in whose name they had taken the transfer from the vendor. These were registrable interests and therefore caveatable interests.

One has a certain sympathy for the appellants, as they bought from the registered proprietor. But they took a risk fortified perhaps by legal advice that the caveats presented and registered by the 2nd and 3rd respondents were un-enforceable in law.

For these reasons I would dismiss this appeal, and order that the deposit be paid to the respondents against their costs.

Murray-Aynsley, C.J. (S.) : — These proceedings arise out of a claim for specific performance. It appears that a partner held land registered in his own name which turned out to be partnership property. It has always been the law that a single partner could contract to sell partnership property and give a good title. As long as the purchaser has acted in good faith I do not see that the fact that the land was partnership property should be a reason for refusing specific performance. I do not think that the presence of a caveat makes any difference unless the caveator has a caveatable interest, which is not the case here. If anyone could have lodged a caveat at the material time it should be the receiver. To hold otherwise would be to convert the system of caveats into a device for clogging the register with notices of all kinds of interests. The object of the system of registration is to avoid this. If the decision appealed against stands it would be unsafe to deal with anyone who had ever been a partner. I think that the fallacy lies in treating partners as trustees. *Inter se* though partnership is a matter of contract, partners have some duties analogous to those of trustees. In dealing with those outside the partnership this does not hold good.

I would allow the appeal.

Wilson, J. : — I have had the opportunity of reading the judgment of the President. I am in agreement with it and have nothing to add.

Appeal dismissed.

THE ASSISTANT COMMISSIONER FOR LABOUR, KLANG, on behalf of APPATHURAI v. THE MANAGER, CARGO HANDLING CORPN., LTD.

[Workmen's Compensation (Taylor, J.) June 30, 1953]

[K.L. — Civil Appeal No. 14 of 1953]

Workmen's Compensation — Labour officer representing adult workman not litigant — Proceedings ought to be in workman's name.

A Government advocate cannot appear for a party in proceedings between subject and subject, where the Government has no real interest.

It is the duty of Courts and Commissioners to see that parties are properly cited and to record arguments and decisions on any objections taken.

WORKMEN'S COMPENSATION.

L. A. Massie (Federal Counsel) for the appellant.

H. E. P. P. Powell for the respondent.

Cur. Adv. Vult.

Taylor, J. : — This is an appeal from an order of the Commissioner for Workmen's Compensation, Selangor, awarding compensation for partial disability caused by an accident, to one Appathurai.

The proceedings were very badly framed. In the original application the workman was named as the applicant, and the respondent was stated to be the Manager of the Cargo Handling Corporation, Limited, of Port Swettenham. In the notice of appeal the Assistant Commissioner for Labour, on behalf of Appathurai, was alleged to have been the applicant, and the manager was made respondent, as before. To take the latter point first, it ought not to be necessary to point out to Commissioners for Workmen's Compensation that where a limited liability company is sued the company itself, the corporate body, must be the party. The manager may be a person on whom process can be served, but that does not make him the respondent. Citing of parties is something more than a technicality. Even in the most informal courts it ought to be understood that a decree is drawn up in the same names as the earlier proceedings so that unless the real defendant is named, the ultimate order will not be enforceable.

Counsel for the respondent stated that he had drawn attention to this point at the hearing but that the Commissioner had brushed it aside. There is no mention of this in the notes of the hearing. Wherever a point of this kind is taken by counsel, the presiding officer ought to make at least a brief note of the point and of his ruling. Whether counsel took the point in this case or not, the Commissioner himself should have taken care that the employer was correctly cited.

The Memorandum of Appeal is headed: — "Assistant Commissioner of Labour, on behalf of Appathurai . . . Appellant and . . . The Manager (of the Company) . . . Respondent" . . . and signed: — "ABC, Federal Counsel, Federation of Malaya, Solicitor for Appellant."

Procedure under the Workmen's Compensation Ordinance is made as simple as possible but this must not obscure the fact that in the case of an adult it is the workman himself who is the applicant. He is the *dominus litis* and the proceedings must be in his name. The labour officer may be authorised to sign a document on his behalf but that does not make the labour officer the litigant. His position is generally similar to that of a solicitor; he has no authority of his own; the authority is that of the workman who can withdraw it at any time and continue in person or instruct a solicitor if he so desires.

The appearance of a federal counsel is open to objection on two grounds. The whole question in these proceedings is a question of money between the employer and the workman; it is a question between subject and subject and it is inconsistent with modern constitutional practice for a government advocate to appear in such a matter unless the Treasury are in some way concerned. That, in my view, is a major objection. There is also the technical objection that, if he were deemed to be acting for the workman, this Federal Counsel has never been admitted as an advocate and solicitor. However, in order to avoid delay and expense, I permitted counsel to address the court on the merits, as *amicus curiae*.

The facts of the case are these. The workman sustained permanent injury to his left arm by an accident in the course of his employment. The surgeon estimated the permanent partial disability at 15 per cent. Liability was admitted but the workman claimed that his disability amounted to 50 per cent. The sole question was the extent of the disability. It must always be remembered that although the workman is assisted in various ways he is, nevertheless, in substance a plaintiff and the onus is on him (or his advisers) to prove all the necessary facts. There was no evidence whatever on which the Commissioner could have found that the disability of this workman exceeded 15 per cent.

Counsel for the employer took the point that appeal from the award of a Commissioner does not lie unless some substantial question of law is involved in the appeal. The three grounds of appeal set out in the memorandum raise no point of law. The appeal was therefore incompetent and was dismissed with costs on that ground but subject to amendment of the proceedings by making the company the respondent.

Appeal dismissed.

MOHAMED ABDULLAH v. TEOH TENG SWEE.

[O. C. J. (Thomson, J.) May 15, 1951]

[Ipoh — Civil Suit No. 386 of 1950]

AND

TEOH TENG SWEE v. CHENG KOK YAU & ANOR.

[O. C. J. (Thomson, J.) July 13, 1953]

[Ipoh — Civil Suit No. 501 of 1951]

Land laws — Principal and agent — Attorney not empowered to sell — Payment of gift to "Imperial Nipponese Government" — Sale of land by attorney during Japanese occupation — Validation of transaction by special order No. 1 of 2602 — Subsequent sale by purchaser before registration of his title — Mutual mistake — Frustration — Debtor & Creditor (Occupation Period) Ordinance, 1948 — Debt or obligation incurred during occupation period — Compensation — Basis of valuation — Knowledge of lack of authority — Effect of s. 16D of Titles to Land (Occupation Period) Ordinance, 1949.

C.K.C., attorney of C.K.Y. resident at Hong Kong during occupation period, under a limited power of attorney, which did not authorise sale of lands, purported to sell his principal's land by a memorandum of transfer dated 7th June, 1942 to T.T.S. for the purpose of raising money to pay contribution called "Gift to the Imperial Nipponese Government". The transfer was executed by C.K.C. and accepted by T.T.S. in the well-founded belief that the proposed legislation by occupying power, which in fact was promulgated as special order No. 1 of 2602 (1942) on 27.7.42, would validate such a transaction.

Pending registration of transfer T.T.S., describing himself as "registered proprietor" of the land, executed a subsequent transfer thereof to M.A. on 5.6.1943. Both transfers, which were pending registration at the time of Japanese surrender, were rejected by the Registrar of Titles on 1.3.1950 on the grounds that, as to the first transfer, C.K.C. had no authority and, as to the second transfer, T.T.S. not being the registered proprietor could not convey.

In an action by M.A. against T.T.S. (neither C.K.Y. nor C.K.C. being parties thereto) for recovery of purchase money. —

Held: (1) at the time second transfer was executed both parties were under the mistaken belief that T.T.S. was the registered proprietor; (2) the second transfer was, therefore, void ab initio; (3) M.A. was entitled by reason of frustration of contract, to refund of purchase money as money had and received; (4) such a